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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
|-----------------|-------------|----------------------|---------------------|------------------|

10/574,111

03/31/2006

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2006-0371A

7206

513 7590 01/14/2009

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SUITE 800

WASHINGTON, DC 20006-1021

EXAMINER

FORTUNA, ANA M

ART UNIT

PAPER NUMBER

1797

MAIL DATE

DELIVERY MODE

01/14/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

***Response to Arguments***

1. Applicant's arguments filed 12/30/08 have been fully considered but they are not persuasive. Claims 1-4 and 6-7 are pending in this application, the claims are directed to a product or hollow fiber membrane, and to the process of making the specific membrane. Claim 1 is amended by inserting the membrane porosity, the process claim is not amended, and the Obvious Type double patenting rejection is maintained, because a terminal disclaimer has not been filed. Although the amendment will overcome the rejection based on Takamura et al ('773), it does not overcome the rejection based on EP 1063256, because the newly added porosity is disclosed in the later document ([0108], [0109], [0119]). The average of membrane pore size in the range of 0.005 to 5 microns (paragraph [0031]). EP'256 suggests using the composition "mixtures" of the polymer with the molecular weight claimed (paragraph [0046]). The ratio of molecular weight claimed can be obtained by selecting as M2 the polymer with the molecular weight of about  $3.3 \times 10^5$ , which is within the suggested molecular weights disclosed in EP'256.

2. Applicant argues that EP'256 does not show examples of polymer blends mixtures; however, a disclosure in a reference is not limited to its specific illustrative examples, but must be considered as a whole to ascertain what would be realistically suggested to one of ordinary skill in the art. In re Uhlig, 54 CCPA 1300 376 F2d 320; 153 USPQ 460.

3. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies

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(i.e., elongation break, stretch ratio) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Applicant argues that by selecting the blend of polymers with the particular molecular weight the elongation of the unstretched membrane increases leading to a better stretchability and larger average pore size. These limitation of elongation and stretch ratio, average pore size are not part of the claims. Further more, the membrane in EP'256 appears to meet the argued limitations based on the values of membrane average pore size produced by the polymer or polymer mixture as discussed above. For these reasons the rejection is proper.

4. Rejection based on obvious type double patenting is also maintained, as in the record.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ana M. Fortuna whose telephone number is (571) 272-1141. The examiner can normally be reached on 9:30-6:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David R. Sample can be reached on (571) 272-1376. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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